



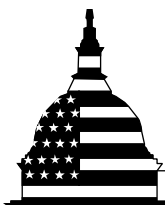
Report to the Committee on Armed  
Services, U.S. Senate

---

September 2012

# SUSPENSION AND DEBARMENT

DOD Has Active  
Referral Processes,  
but Action Needed to  
Promote  
Transparency



G A O

Accountability \* Integrity \* Reliability

---

Report Documentation Page				Form Approved OMB No. 0704-0188	
Public reporting burden for the collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Washington Headquarters Services, Directorate for Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington VA 22202-4302. Respondents should be aware that notwithstanding any other provision of law, no person shall be subject to a penalty for failing to comply with a collection of information if it does not display a currently valid OMB control number.					
1. REPORT DATE <b>SEP 2012</b>		2. REPORT TYPE		3. DATES COVERED <b>00-00-2012 to 00-00-2012</b>	
4. TITLE AND SUBTITLE <b>Suspension and Debarment: DOD Has Active Referral Processes, but Action Needed to Promote Transparency</b>				5a. CONTRACT NUMBER	
				5b. GRANT NUMBER	
				5c. PROGRAM ELEMENT NUMBER	
6. AUTHOR(S)				5d. PROJECT NUMBER	
				5e. TASK NUMBER	
				5f. WORK UNIT NUMBER	
7. PERFORMING ORGANIZATION NAME(S) AND ADDRESS(ES) <b>U.S. Government Accountability Office, 441 G Street NW, Washington, DC, 20548</b>				8. PERFORMING ORGANIZATION REPORT NUMBER	
9. SPONSORING/MONITORING AGENCY NAME(S) AND ADDRESS(ES)				10. SPONSOR/MONITOR'S ACRONYM(S)	
				11. SPONSOR/MONITOR'S REPORT NUMBER(S)	
12. DISTRIBUTION/AVAILABILITY STATEMENT <b>Approved for public release; distribution unlimited</b>					
13. SUPPLEMENTARY NOTES					
14. ABSTRACT					
15. SUBJECT TERMS					
16. SECURITY CLASSIFICATION OF:			17. LIMITATION OF ABSTRACT <b>Same as Report (SAR)</b>	18. NUMBER OF PAGES <b>34</b>	19a. NAME OF RESPONSIBLE PERSON
a. REPORT <b>unclassified</b>	b. ABSTRACT <b>unclassified</b>	c. THIS PAGE <b>unclassified</b>			

## Why GAO Did This Study

DOD spends more than any other federal agency on contracts for goods and services and must be able to protect itself from irresponsible contractors. Once a case of misconduct—such as fraud—is identified, DOD can use suspensions and debarments to prevent irresponsible contractors from receiving new contracts. As requested, GAO determined (1) the extent to which DOD has processes for identifying and referring cases of contractor misconduct for possible suspension or debarment, and (2) how DOD makes suspension and debarment decisions once cases have been referred for potential action. GAO's review focused on four DOD components—the Departments of the Air Force, Army, Navy (including the U.S. Marine Corps), and Defense Logistics Agency—which together took a total of 3,443 suspension and debarment actions during fiscal years 2009 through 2011, accounting for nearly 100 percent of all such actions in DOD. GAO reviewed DOD and component regulations, procedures, and policies; reviewed case files; analyzed information from federal databases; and interviewed DOD and component officials.

## What GAO Recommends

GAO recommends that DOD ensure that DOD components are aware of and comply with the requirement to notify GSA when awarding contracts to suspended or debarred contractors based on compelling reason determinations. DOD concurred with this recommendation.

View [GAO-12-932](#). For more information, contact William T. Woods at (202) 512-4841 or [woodsw@gao.gov](mailto:woodsw@gao.gov).

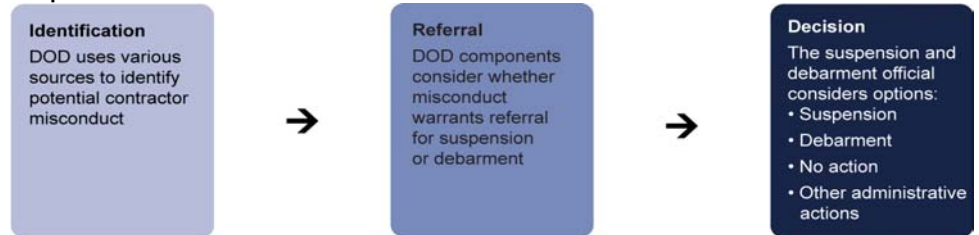
# SUSPENSION AND DEBARMENT

## DOD Has Active Referral Processes, but Action Needed to Promote Transparency

## What GAO Found

The four Department of Defense (DOD) components GAO examined have active processes for referring identified cases of contractor misconduct for appropriate action, including suspension or debarment. The components identify numerous cases of actual or alleged contractor misconduct each year from various internal and external sources. The figure below shows the process for identifying and referring cases to the suspension and debarment official for consideration.

**Suspension and Debarment Identification and Referral Process**



Source: GAO analysis of DOD process and documents.

DOD received hundreds of leads on contractor misconduct from sources such as lawsuits against contractors or contractor disclosures in fiscal years 2009 through 2011, although it is not possible to know the full extent of potential leads. Some cases are referred to suspension and debarment officials for their consideration or to other agencies for further action. GAO's analysis of selected cases shows that DOD follows its procedures for identifying and referring cases involving contractor misconduct or poor performance for possible suspension and debarment.

Once a case is referred, DOD generally makes suspension and debarment decisions in accordance with the discretion provided by the Federal Acquisition Regulation (FAR). GAO found in reviewing 75 case files that DOD generally maintained adequate records, informed the contractor of the cause and rationale for its decisions, and provided notice of the action to the contractor as required by the FAR. Given the discretion provided by the FAR, suspension and debarment periods vary based on the circumstances of the case, as do the reasons for removing contractors from the suspension and debarment list. For example, the FAR provides that the period of debarment generally should not exceed 3 years, but notes that the debarment period must be for a period commensurate with the seriousness of the cause. GAO found that nearly half the contractors DOD debarred during fiscal years 2009 through 2011 had debarment periods that exceeded 3 years.

The FAR prohibits all agencies from doing business with suspended or debarred contractors unless there is a compelling reason for doing so. The four DOD components made 14 compelling reason determinations during fiscal years 2009 through 2011. In none of these cases, however, did the components provide notice of their compelling reason determinations to the General Services Administration (GSA), as required by statute and regulation, until GAO raised this as an issue. Component officials said they were uncertain why these determinations which can promote transparency to the public were not forwarded to GSA.

---

# Contents

---

Letter		1
	Background	4
	DOD Components Have Active Processes to Refer Identified Cases of Contractor Misconduct for Appropriate Action	6
	DOD Follows the FAR in Taking Suspension and Debarment Actions, but Is Not Notifying GSA about Compelling Reason Determinations	11
	Conclusion	18
	Recommendation for Executive Action	18
	Agency Comments	19

---

Appendix I	Scope and Methodology	20
------------	-----------------------	----

---

Appendix II	DOD Components' Suspension and Debarment Programs and Staff	26
-------------	---	----

---

Appendix III	Comments from the Department of Defense	27
--------------	---	----

---

Appendix IV	GAO Contact and Staff Acknowledgments	29
-------------	---------------------------------------	----

---

Tables		
	Table 1: DOD Components Suspension, Proposed Debarment, and Debarment Actions, Fiscal Years 2009 through 2011	3
	Table 2: Selected Sources of Information Used to Identify Contractor Misconduct, Fiscal Years 2009 through 2011	8
	Table 3: DOD Debarments Exceeding 3 Years, Fiscal Years 2009 through 2011	14
	Table 4: Administrative Agreements for DOD Components, Fiscal Years 2009 through 2011	16
	Table 5: DOD Compelling Reason Determinations, Fiscal Years 2009 through 2011	17
	Table 6: The Four Components Actions Reported in EPLS and Firms (Contractors), Fiscal Years 2009 through 2011	21
	Table 7: Description of the Population of Contractors with a Suspension, Proposed Debarment, and Debarment Issued	

---

by the Air Force, Army, DLA, and DON, Fiscal Years 2009 through 2011	22
Table 8: Description of the Stratified Random Sample from the Population of Contractors With a Suspension, Proposed Debarment, or Debarment by the Air Force, Army, DLA, or Navy, Fiscal Years 2009 through 2011	23
Table 9: Description of the Random Sample of Contractors With Three or More Terminations for Default Issued by the Air Force, Army, Navy, or DLA, Fiscal Years 2006 through 2011	24

---

## Figures

Figure 1: Process for Identifying and Referring Potential Contractor Misconduct for Possible Suspension or Debarment	4
Figure 2: Evidence of Selected FAR Requirements in 75 Contractor Case Files	12

---

## Abbreviations

DCIO	Defense Criminal Investigative Office
DCIS	Defense Criminal Investigative Service
DLA	Defense Logistics Agency
DOD	Department of Defense
DODIG	Department of Defense Inspector General
DUNS	Data Universal Numbering System
EPLS	Excluded Parties List System
FAR	Federal Acquisition Regulation
FPDS-NG	Federal Procurement Data System – Next Generation
GSA	General Services Administration
SDO	Suspension and Debarment Official

This is a work of the U.S. government and is not subject to copyright protection in the United States. The published product may be reproduced and distributed in its entirety without further permission from GAO. However, because this work may contain copyrighted images or other material, permission from the copyright holder may be necessary if you wish to reproduce this material separately.



United States Government Accountability Office  
Washington, DC 20548

September 19, 2012

The Honorable Carl Levin  
Chairman  
The Honorable John McCain  
Ranking Member  
Committee on Armed Services  
United States Senate

In fiscal year 2011, the Department of Defense (DOD) had the federal government's largest procurement budget, totaling over \$375 billion. The department's ability to protect itself from irresponsible contractors is, therefore, essential. A 2011 DOD report identified contractors that had (1) been convicted, (2) entered into settlement agreements, or (3) had civil judgments rendered against them based on charges of fraud related to DOD contracts; some of these contractors subsequently had received contract funding from DOD. This finding raised questions about DOD's efforts to address contractor misconduct. Suspensions and debarments are tools that DOD and other agencies can use to protect federal dollars from going to irresponsible contractors. A suspension is a temporary disqualification of a contractor from government contracting pending the completion of an investigation and any ensuing legal proceedings.<sup>1</sup> A debarment is an exclusion of a contractor from government contracting for a specified period. These actions may be based on various types of misconduct.

You requested that we review the use of suspensions and debarments by DOD to protect the government from irresponsible contractors. Specifically, we determined (1) the extent to which DOD has processes for identifying and referring cases of contractor misconduct for possible suspension or debarment, and (2) how DOD components make suspension and debarment decisions once cases have been referred for potential action.

To determine the extent to which DOD has processes for identifying and referring cases of contractor misconduct for possible suspension and

---

<sup>1</sup>Suspensions and debarments also exclude a contractor from government-approved subcontracting.

---

debarment, we reviewed the Federal Acquisition Regulation (FAR), specifically Subpart 9.4 which details causes, period, scope, and procedures for suspension and debarment, as well as regulations, procedures, and policies on suspension and debarment for the Department of the Navy (DON) (including the U.S. Marine Corps), Departments of the Air Force, and Army, and the Defense Logistics Agency (DLA). These DOD components accounted for almost all DOD suspensions and debarments for fiscal years 2007 through 2011. We performed additional analysis to determine if DOD components consider suspension and debarment for contractors with a history of poor performance. Specifically, we identified contractors listed in Federal Procurement Data System—Next Generation (FPDS-NG) with three or more contracts terminated for an actual or anticipated failure to perform contractual obligations that involved at least one of the four DOD components listed above. To determine how DOD components make suspension and debarment decisions and gain insight into DOD's processes, decision making, and adherence to regulations, we interviewed suspension and debarment, acquisition, and criminal investigative officials. We also analyzed data from FPDS-NG and the Excluded Parties List System (EPLS) regarding suspended and debarred contractors.<sup>2</sup>

We augmented this work with a detailed review of 75 case files we selected from the total universe of suspension, proposed debarment, and debarment actions for contractors during fiscal years 2009 through 2011 reported by the four DOD components in EPLS. An action in EPLS may be related to numerous other EPLS actions. For example, multiple individuals may be associated with a debarred contractor or the contractor may be listed under different names—all of which are recorded as separate actions in EPLS. In addition, each listed contractor or individual can have a suspension, proposed debarment, or debarment, all of which are listed as separate actions. There were 3,443 such actions by all four DOD components during fiscal years 2009 through 2011, as shown in table 1.

---

<sup>2</sup>EPLS is a publicly available electronic database containing the list of all parties suspended, proposed for debarment, debarred, declared ineligible, or excluded or disqualified by agencies. It was recently combined with other data systems and the suspension and debarment information can now be found in the System for Award Management.

**Table 1: DOD Components Suspension, Proposed Debarment, and Debarment Actions, Fiscal Years 2009 through 2011**

Component	Total actions during this period	Total contractors with an initial action during this period
Department of the Air Force	800	197
Department of the Army	953	268
Defense Logistics Agency	1,168	341
Department of the Navy	522	109
<b>Total</b>	<b>3,443</b>	<b>915</b>

Source: GAO analysis of EPLS data.

For the purpose of this review, we identified contractors (listed as “firms” in EPLS) with an initial action during fiscal years 2009 through 2011. We combined the current and archived actions for contractors, and eliminated duplicates. We defined a contractor as an entity having a unique Data Universal Numbering System (DUNS) number or a debar identifier.<sup>3</sup> This resulted in a total of 915 contractors. From this total, we selected a stratified random sample of 75 contractors within the four DOD components for a detailed case file review. We obtained and examined case files for the 75 contractors to determine the source of the action, verify DOD’s compliance with federal and defense regulations, and analyze the reasoning for suspension or debarment periods. We also analyzed compelling reason determinations, which allow agencies to award a contract to a suspended or debarred contractor under special circumstances.

We assessed the reliability of EPLS data by performing electronic testing, reviewing system documentation, and relying on a recent assessment of the reliability of EPLS data in a prior GAO engagement.<sup>4</sup> We determined that the data we used, from both EPLS and FPDS-NG, were sufficiently reliable for the purpose of this review.

<sup>3</sup>A DUNS number is a proprietary means of identifying business. The DUNS number is used as the federal government’s contractor identification code. A debar identifier is a unique identification number assigned to a contractor and action(s) entered into EPLS.

<sup>4</sup>GAO, *Suspension and Debarment: Some Agency Programs Need Greater Attention and Governmentwide Oversight Could Be Improved*, [GAO-11-739](#) (Washington, D.C.: Aug. 31, 2011).

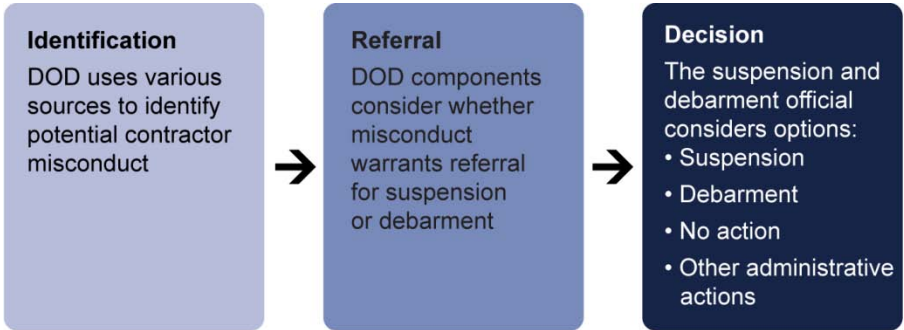


We conducted this performance audit from September 2011 to September 2012 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. For more information on our scope and methodology, see appendix I.

# Background

Under the FAR, a responsible prospective contractor is one that meets the standards set forth in section 9.104, which include adequate financial resources to perform the contract, a satisfactory performance record, and a satisfactory record of integrity and business ethics. Agencies have many different tools at their disposal to protect the government's interests. For example, civil and criminal penalties may be imposed for contracting fraud and other violations. Suspension and debarment are not a punishment but instead support the policy that agencies shall only solicit offers from, award contracts to, and consent to subcontracts with responsible contractors. The decision to suspend or debar a contractor also represents a significant step in a process that identifies, refers, and takes action in some cases to ban contractors from receiving future government contracts.

**Figure 1: Process for Identifying and Referring Potential Contractor Misconduct for Possible Suspension or Debarment**



Source: GAO analysis of DOD process and documents.

A suspension is a temporary disqualification of a contractor from government contracting. A proposed debarment occurs when a debarring official issues a notice of proposed debarment, and lasts until the

---

debaring official makes the decision on whether or not to debar for a specified period. A debarment is an exclusion of a contractor from government contracting for a specified period after debarment procedures—which begin with a notice of proposed debarment—have been followed. Depending on the contractor and circumstances, a contractor could go through one or all of these stages. Suspension, proposed debarment, or debarment generally excludes a contractor from receiving new federal contracts or grants, or from working for another contractor when the government must consent to the subcontract. Alternatively, a contractor may enter into an administrative agreement with an agency instead of being suspended or debarred. Administrative agreements generally require that a contractor meets certain agency-imposed requirements in order to not be suspended or debarred and remain eligible for new contracts.

The FAR identifies specific causes for which a contractor may be suspended or debarred. These include fraud relating to obtaining, performing, or attempting to obtain a public contract or subcontract, violation of antitrust statutes relating to submission of offers, embezzlement, theft, forgery, bribery, falsification or destruction of records, federal tax delinquency, and many other reasons. Suspension and debarment have different standards of evidence necessary to support the official's decision; for example, a conviction or civil judgment of certain offenses may lead to a debarment while an official can suspend a contractor upon adequate evidence of the same offenses. The FAR also permits an agency to suspend or debar individuals or companies that are affiliated with another individual or contractor that has been suspended or debarred. None of these causes provide for automatic suspension or debarment. Rather, the suspension and debarment official (SDO) within each agency has the authority to decide that it is in the government's interests to suspend or debar a contractor on a case-by-case basis. The suspension or debarment covers the entire executive branch of the federal government. Individual agencies may still contract with a suspended or debarred contractor if they have documented in writing that a compelling reason to do so exists. In addition, DOD is required by law to submit notice of its compelling reason determinations to the General Services Administration (GSA), which maintains these notices for public inspection.

We and the DOD Inspector General (DODIG) have previously reported on DOD's ability to protect the government's interests through its suspension and debarment programs. Specifically, in August 2011 we reported on the suspension and debarment programs of ten federal agencies including

---

two DOD components, DLA and DON. We found these DOD components had active suspension and debarment programs and were among the four agencies governmentwide that had the most suspension and debarment cases.<sup>5</sup> Also, in July 2011, the DODIG reported that the Army, DON, Air Force, and DLA had generally effective suspension and debarment processes and made recommendations on how to further strengthen them.<sup>6</sup> DOD has since taken actions to address the DODIG recommendations, including updating its guidance to provide specific information on referrals of contract-related matters to the appropriate officials for further investigation and appropriate action.

---

## DOD Components Have Active Processes to Refer Identified Cases of Contractor Misconduct for Appropriate Action

All four DOD components we examined—the Air Force, Army, DLA, and DON—use multiple sources to identify numerous cases of actual or alleged contractor misconduct and follow their procedures to refer them for appropriate action, including possible suspension and debarment. Such cases are referred within DOD to SDOs and to other agencies, including the Department of Justice (Justice), for further action depending on the remedy or action being pursued. Our analysis of selected cases confirmed that DOD follows its procedures for identifying and referring cases involving contractor misconduct or poor performance.

---

## DOD Identifies Contractor Misconduct Using Various Sources

DOD components have various sources for identifying contractor misconduct and investigate numerous leads each year that result in a variety of actions, including suspensions and debarments. Each DOD component is required to monitor from inception all significant investigations of fraud and corruption related to procurement activities affecting the component. Within the Air Force, the Deputy General Counsel for Contractor Responsibility is responsible for identifying and investigating contractor misconduct to determine the appropriate remedy or action. Within the Army this responsibility is centralized within the Procurement Fraud Branch of the Contract and Fiscal Law Division of the

---

<sup>5</sup>GAO, *Suspension and Debarment: Some Agency Programs Need Greater Attention and Governmentwide Oversight Could Be Improved*, [GAO-11-739](#) (Washington, D.C.: Aug. 31, 2011).

<sup>6</sup>Department of Defense Inspector General, *Additional Actions Can Further Improve the DOD Suspension and Debarment Process*, D-2011-083 (Arlington, Va.: July 14, 2011).

---

Army Legal Services Agency. At DON, the responsibility is centralized under the Acquisition Integrity Office, a component of the DON Office of General Counsel. DLA has decentralized this responsibility among the local counsels at each buying activity who forward referrals to the office of DLA's SDO for consideration. These organizations, which we refer to generally as acquisition integrity offices, are the focal points for coordinating the suspension and debarment process and are tasked with receiving and developing leads from many sources. These sources include

- Defense Criminal Investigative Organizations (DCIO);<sup>7</sup>
- DOD component contracting officers, program officials, and attorneys;
- Contractor or subcontractor mandatory disclosures;<sup>8</sup>
- Defense Contract Audit Agency;
- Defense Contract Management Agency;
- Inspector General Offices, including Hotline tips;
- Whistleblowers and Qui Tam lawsuits;<sup>9</sup>
- Federal Bureau of Investigation referrals;
- Bid protest cases;
- Quality deficiency reports;
- Armed Services Board of Contract Appeals; and
- News articles.

For some of these sources of information, data were readily available showing the overall level of activity, which is shown in table 2 below. These and other sources generate leads that can be used to identify potential instances of contractor misconduct, although it is not possible to assess to what extent leads are being missed.

---

<sup>7</sup>DCIOs include the U.S. Army Criminal Investigation Command, the Naval Criminal Investigative Service, the U.S. Air Force Office of Special Investigations, and the Defense Criminal Investigative Service (DCIS) which resides within DODIG and provides investigative capabilities to those DOD components that do not have their own DCIO.

<sup>8</sup>Since 2008, it has been mandatory for all federal government contractors to report fraud and significant overpayments in connection with their government contracts to the federal government. Failure to do so is a cause for suspension or debarment.

<sup>9</sup>Under the False Claim Act's qui tam provisions, a person with evidence of fraud, also known as a relator, is authorized to file a case in federal court and sue, on behalf of the government, persons engaged in the fraud and to share in any money the government may recover. The Department of Justice has the responsibility to decide on behalf of the government whether to join the whistleblower in prosecuting these cases.

---

**Table 2: Selected Sources of Information Used to Identify Contractor Misconduct, Fiscal Years 2009 through 2011**

Source of information	2009	2010	2011
Department of Justice qui tam lawsuits	52	56	46
Contractor self reporting	81	203	240
Hotline contacts <sup>a</sup>	13,750	16,981	20,402

Source: GAO analysis and presentation of DODIG statistics.

<sup>a</sup>Hotline numbers include all reported actions, not only those actions involving contractors. In addition to contractor misconduct, the Defense Hotline provides a vehicle for military service members, DOD civilians, contractor employees, and the public to report fraud, waste, mismanagement, abuse of authority, threats to homeland security and leaks of classified information.

These leads can result in suspension and debarment cases. For example, when contractors are convicted of criminal violations, such as fraud related to government contracts, this provides a basis for debarment. A contractor may be suspended upon the determination that there is adequate evidence of such a violation. In cases not based on a conviction or civil judgment, for example, a contractor's failure to make certain disclosures to the government, agencies can suspend a contractor upon adequate evidence or debar a contractor based upon a preponderance of evidence.

For the 2011 DOD report on contracting fraud, the DODIG reviewed the DCIOs' methodology and processes used in accounting for and reporting actions associated with major procurement fraud investigations. The DODIG review found that the DCIOs have a reliable methodology and processes to report fraud cases.<sup>10</sup>

---

## DOD Components Have Procedures and Practices to Refer Cases of Contractor Misconduct for Suspension and Debarment

DOD's guidance instructs components to develop procedures for the coordination of criminal, civil, contractual, and administrative remedies to address contractor fraud and corruption. This guidance outlines the roles of different components and investigative groups and how they are to coordinate their efforts. DOD components have developed these procedures and also have guidance on the process for evaluating contractor misconduct.

---

<sup>10</sup>Department of Defense, *Report to Congress on Contracting Fraud*, D-315854E (Arlington, Va.: October 2011).

---

Under these procedures, DCIOs regularly coordinate their efforts and refer investigation information to Justice and to other DOD components. For example, the DODIG reported that during fiscal years 2009 through 2011, DCIO investigations and subsequent referrals to Justice resulted in over 1,000 indictments and over 800 convictions. Within DOD components, DCIOs gather and share information on investigations with their respective acquisition integrity offices. Each of them maintains databases that track leads and contain detailed information on investigations. Such information is also tracked in a shared, integrated system that contains basic case information. DCIO officials also collaborate informally, via telephone or e-mail, if they need to share additional information. DOD officials stated that staff on a particular case may include DCIO investigators who specialize in procurement fraud. Within DLA, DCIS agents are embedded on the fraud team in each of the buying activities we examined. The DON also has a Naval Criminal Investigative Service agent embedded with the acquisition integrity office. In the other DOD components, DCIO agents are involved on an ad hoc basis and may be asked by the acquisition integrity offices to gather additional information on their behalf for specific cases.

Acquisition integrity offices in each component monitor and ensure the coordination of criminal, civil, administrative, and contractual remedies for each significant investigation of fraud or corruption related to contracting. They are also tasked with preparing training materials on fraud and corruption that are shared at procurement-related training events. These offices build cases in consultation with the SDOs for their consideration. (The SDOs are supported by full-time staff as shown in appendix II.) For example, the DON Acquisition Integrity Office monitors and ensures coordination of all acquisition integrity matters. DLA is structured slightly differently than the other three DOD components. The attorneys from DLA's general counsel office work alongside contracting officers at each buying activity. According to DLA officials, this proximity lends itself to having informal discussions as issues come up on individual contracts or with contractors. The attorneys at each buying activity manage administrative remedies in consultation with contracting officers and involve SDOs while a case is being developed to help inform them of the facts. Officials stated that SDOs are knowledgeable of findings before a case file is referred to them for a decision and that a case handed to an SDO is rarely rejected since they have already been briefed and involved in its development.

---

## Analysis of Contractor Misconduct Cases Shows That DOD Follows Its Identification and Referral Processes

DOD follows its procedures for identifying and referring cases involving contractor misconduct or poor performance, based on our analysis of

- A random sample of 75 contractors suspended, proposed for debarment, or debarred during fiscal years 2009 through 2011;
- The 48 contractors identified in the 2011 DOD contracting fraud report as having received contract funding after criminal convictions, settlement agreements, or civil judgments; and
- A random sample of 62 contractors that had three or more contracts terminated for default.

DOD's use of numerous sources was evident in our sample of 75 contractors suspended, proposed for debarment, or debarred during fiscal years 2009 through 2011. For example, we found actions that were initiated by DCIOs, the Defense Contract Management Agency, contractors, or one of DLA's Product Test Centers. Specifically, the 75 actions included 26 that were identified from DCIOs and other investigations, 18 based on poor performance, 22 from indictments, and 9 based on convictions. Also, the 75 cases we examined demonstrated ongoing referral of cases of contractor misconduct between the DCIOs, acquisition integrity offices, and the SDOs, and, where applicable, field activities, to determine the appropriate remedy, including suspension and debarment.

In the 2011 DOD contracting fraud report, DOD identified contractors convicted of fraudulent actions and those that entered into settlement agreements or had civil judgments rendered against them over a 10-year period. The report also provided the dollar amounts, if any, DOD obligated to these contractors subsequent to these actions. We found that DOD generally had reviewed these contractors for possible suspension and debarment or other action. Of the 148 cases listed in DOD's report for 2008 through 2010, 48 contractors received contract funding after criminal convictions, settlement agreements, or civil judgments. All 48 contractors had been reviewed by the acquisition integrity offices and were not in a suspended or debarred status when they received new contract funding. Specifically, in

- Ten cases, contractors were initially suspended or debarred, but in
  - Four cases, administrative agreements were implemented afterwards; and in
  - Six cases, the contractor's debarment periods ended prior to receiving contract funding;
- Eighteen cases, the government entered into settlement agreements to resolve allegations in lieu of suspension or debarment;

- 
- Five cases, the employees or subsidiaries were suspended or debarred but the companies were not; the companies were assessed civil penalties;
  - Four cases, an agency other than DOD was responsible for taking the action; and in
  - Eleven cases, DOD decided not to take action based on its investigation.

The FAR provides the SDO with discretion to debar a contractor for violating the terms of a government contract or subcontract, including cases where a contractor has had a history of poor performance on one or more contracts. One method DOD uses to identify such contractors is by examining terminations for default on government contracts. A termination for default is the exercise of the government's right to completely or partially terminate a contract because of the contractor's actual or anticipated failure to perform its contractual obligations. We found that in many cases, DOD components reviewed contractors that have had contracts terminated for default for possible suspension and debarment. During fiscal years 2006 through 2011, we found that 126 contractors had three or more contracts terminated for default governmentwide. We randomly selected a total of 62 of these contractors from the four DOD components to determine if DOD had reviewed their performance to consider additional administrative action, as appropriate. According to DOD officials, 46 of the 62 contractors—74 percent—were reviewed or were undergoing review for possible suspension or debarment, with 13 already suspended or debarred. DOD officials stated that contracting officers should review contractors' terminations for default for possible suspension or debarment. They noted that not all such terminations warrant further action by DOD.

---

## DOD Follows the FAR in Taking Suspension and Debarment Actions, but Is Not Notifying GSA about Compelling Reason Determinations

Once a case of contractor misconduct is referred to the SDO, DOD components follow the FAR in taking action. SDOs make decisions on a case-by-case basis, in accordance with the discretion provided by the FAR. As such, suspension and debarment periods vary based on the circumstances of the case, as do the reasons for removing contractors from the EPLS. In addition, while DOD rarely uses compelling reason determinations to contract with suspended or debarred contractors, it has not been complying with legal requirements to share that information with GSA when it does so.



DOD Suspension and Debarment Decisions Made in Accordance with the FAR

The FAR allows DOD components to use their discretion in deciding whether to suspend or debar a contractor. SDO’s within each DOD component make case-by-case determinations based on criteria specified in the FAR. We found that DOD components generally follow FAR requirements in taking suspension and debarment actions. The 75 case files we reviewed provided insight into the reasoning, evidence, and the final determination or remedy involving each contractor, as shown in figure 2 below.

Figure 2: Evidence of Selected FAR Requirements in 75 Contractor Case Files

Maintain records of case files	✓
Cause and rationale for actions	✓
Provided 30 days notice to allow contractor to provide evidence in opposition to suspension or proposed debarment	✓
Evidence of the period of suspension or debarment, where applicable <sup>a</sup>	✓
SDO final decision, where applicable <sup>a</sup>	✓

Source: GAO analysis based on DOD case files.  
<sup>a</sup>At the time of our review, final decisions were still pending in some cases.

Companies are informed of suspension or debarment actions when they receive a notice that informs them that the SDO is either suspending them or proposing them for debarment. The notice sent to a contractor being suspended or proposed for debarment immediately renders the contractor ineligible for contracting and lays out the rationale and facts for why the SDO has made this determination. The notice provides the contractor 30 days to provide information and argument in opposition to the SDO decision. If a contractor responds to the initial letter and submits additional evidence to oppose the suspension or proposed debarment, the SDO weighs the additional information provided by the contractor against the evidence already available to determine: (1) whether the suspension should remain in place, or be modified or terminated; (2) whether the proposed debarment should be finalized, modified, or terminated; or (3) if another tool could be utilized to resolve the suspension or debarment proceeding, such as an administrative agreement. In some cases, even after a decision has been finalized, a contractor may request a reconsideration of the period or extent of

---

debarment by presenting information such as new evidence or the reversal of a conviction.

We found that required notices were in all 75 case files. This demonstrated that DOD components had provided the contractors with information on the suspension and debarment process and the appropriate FAR citation to the cause for which they were being suspended or debarred. In addition, DOD provided contractors with the opportunity to submit information in opposition to the suspension or debarment. Other information in the case files included indictments and convictions, law enforcement evidence, email evidence, reports demonstrating contractor ownership, and final decision memoranda by the SDO, where applicable. The case files generally matched dates that were listed in the EPLS system.

---

### Suspension and Debarment Periods Vary Based on Specific Case Circumstances

The FAR requires that the period of suspension should be temporary pending the completion of an investigation and any ensuing legal proceedings and generally not exceed 12 months unless legal proceedings are initiated. If legal proceedings are not initiated, an Assistant Attorney General at Justice may request an extension of up to 6 months or the agency shall terminate the suspension. If legal proceedings have been initiated within 18 months, the suspension may continue. Of the 915 DOD suspensions, proposed debarments, and debarments from fiscal years 2009 through 2011, there were 410 contractors that had been suspended or were currently suspended at the time of our review. Of these contractors, 180 had suspension periods ranging from 12 to 36 months with 138 greater than 18 months. We did not determine if legal proceedings had been initiated for all 180 contractors. However, our sample of 75 contractors included 18 contractors that had suspension periods longer than 12 months and all these had been indicted or were affiliated with a contractor that have been indicted. For example, 9 contractors had been suspended because of their affiliation with a contractor that had been indicted and because of pending legal proceedings, the suspension periods had exceeded 24 months.

The FAR also provides that a debarment period should be commensurate with the seriousness of the cause and generally should not exceed 3 years, but provides the SDO with discretion to extend that period if it is necessary to protect the government's interest. Of the 915 DOD suspensions, proposed debarments, and debarments from fiscal years 2009 through 2011, 426 were debarments. Of these, 211 (almost 50 percent) were for a period of more than 3 years. Given the unique nature

of each case, the reasons among the different components varied. Table 3 shows the percentage of debarments that exceeded 3 years and the circumstances cited by the SDO in selected cases to justify a longer period. In general, however, officials told us that it is a common practice in the case of criminal convictions to add 3 years to the sentence an individual receives. Thus, a criminal sentence of 4 years would result in a 7-year debarment. One SDO explained that the intent is to give contractors a period of time to re-establish present responsibility through training and experience after their incarceration period has ended. FAR and DOD guidance do not specifically identify this or any other factors in determining when to extend the debarment period beyond 3 years outside of the discretion the SDO has to protect the government's interest.

**Table 3: DOD Debarments Exceeding 3 Years, Fiscal Years 2009 through 2011**

Component	Percentage of debarments exceeding 3 years	Selected cases exceeding 3 years in our sample, their length, and the reason(s) cited for a longer debarment period
Department of Air Force	61	<b>6-year debarment:</b> The owner of a company was initially suspended based on an indictment for 39 counts of making false statements, perjury to a grand jury, destruction of evidence and conflicts of interest. The conviction of the owner and the egregious nature of the conduct led the suspension and debarment official (SDO) to the conclusion that a longer period of debarment was necessary for this company and the owner.
Department of the Army	59	<b>15-year debarment:</b> A company failed to perform on one contract and the contract was terminated for cause. The owner of the company harassed and threatened physical harm against Army personnel and property and was debarred because of misconduct of a serious and compelling nature. The company was then debarred for the same period. <b>9-year debarment:</b> The company was debarred because of its business relations with an Army contracting official who was convicted of fraud and sentenced to 41 months confinement. The SDO concluded in the final debarment decision that given the experience the individual had as a contracting official in the government, it was reasonable to expect the individual to conduct business with the government again and necessary to protect the government for a longer period in order to allow the individual the opportunity to demonstrate they were once again responsible.
Defense Logistics Agency	35	<b>10-year debarment:</b> The SDO became aware of seriously improper misconduct with the company at the time that it had been proposed for debarment for a failure to perform on one or more contracts. The additional misconduct involved unauthorized product substitution on critical parts of helicopters that the SDO found so serious as to justify a longer debarment period for this contractor as well as additional contractors and individuals who were involved. <b>10-year debarment:</b> An individual who was already debarred was using another company to try to continue to do business with the government during the debarment period. The company that was being used was debarred along with the individual as a result of trying to subvert the original debarment.

Component	Percentage of debarments exceeding 3 years	Selected cases exceeding 3 years in our sample, their length, and the reason(s) cited for a longer debarment period
Department of the Navy	63	<p><b>12-year debarment:</b> An owner of a company was convicted of fraud and sentenced to 63 months in prison, 2 years probation, and fines. As a subcontractor on a government contract this company was involved in attempted fraud by failing to meet requirements on Navy aircraft and helicopter inspections and repairs. The SDO noted their egregious, unsafe, selfish, and dishonest actions that indicated a lack of business integrity that was so serious to the safety of personnel and the integrity of the government procurement process that a longer debarment was warranted.</p> <p><b>8-year debarment:</b> The owner and his company were suspended and then debarred. The owner, while suspended for an indictment involving fraud and identify theft, tried to obtain additional government contracts. After charges were dropped, the SDO terminated the initial suspension. However, because of the misrepresentation to contracting officials about the company's suspended status, the SDO proposed the owner and the company for debarment. The SDO decided that a longer debarment period was necessary to protect the government from doing business with this company for its unethical and dishonest practices.</p>

Source: GAO analysis of EPLS data and DOD suspension and debarment case files.

Note: The debarment period represents the entire exclusion period, including time the contractor may have spent in a period of suspension and/or proposed debarment, where applicable.

## Reasons and Processes Vary for Removing Contractors from Suspension and Debarment List

Terminating suspensions and debarments allows contractors to be removed from EPLS and become eligible for federal contracting again. There are various ways a termination can occur.

The FAR provides the SDO broad discretion to reduce the length of or terminate a suspension or debarment upon the contractor's request when supported by documentation for reasons such as newly discovered evidence. Removal from EPLS can result from the suspension and debarment procedures described in the FAR that allow contractors 30 days to submit information or argument in opposition. At the conclusion of these procedures, the SDO may remove the contractor from EPLS. Our sample of 75 contractors included 31 contractors that submitted evidence in opposition and of these, 12 had their suspension or proposed debarment terminated. For example, the SDO terminated a proposed debarment when the contractor provided evidence that it was not affiliated with a company that had been debarred. In another example, the SDO and integrity office had numerous meetings with the contractor and its counsel that eventually led to a termination of the debarment. Additionally, our sample of 75 contractors also included 4 other instances in which the SDO terminated the suspension for the following reasons: (1) the indictment was dismissed, (2) change in ownership and management, (3) the SDO believed that future misconduct was unlikely, or (4) the SDO terminated the suspension because the lack of an indictment.

---

A contractor may also be allowed to enter into an administrative agreement with the government to resolve a suspension or debarment proceeding. Such agreements were used in a total of 30 cases during fiscal years 2009 through 2011. (See table 4 below.)

**Table 4: Administrative Agreements for DOD Components, Fiscal Years 2009 through 2011**

Component	FY 2009	FY 2010	FY 2011
Department of the Air Force	1	9	2
Department of the Army	2	6	3
Department of the Navy	6	1	0
Defense Logistics Agency	0	0	0
<b>Total</b>	<b>9</b>	<b>16</b>	<b>5</b>

Source: GAO analysis of DOD data.

Note: FY = fiscal year.

These agreements are usually approved after the contractor has already been suspended or proposed for debarment. Once the agreement is signed, the suspension or proposed debarment is terminated and the contractor is removed from EPLS. But the contractor must comply with the agreement, which may require using an ethics program, hotline, or independent monitors. Of the 30 administrative agreements used by DOD over the last 3 years, Air Force and Army had the most, with 12 and 11 respectively. DLA officials told us that administrative agreements are not often used because many of DLA's contractors are small businesses and it is difficult to get a contractor to show that it can improve its ethics programs if the owner is closely tied to the company and is the one involved in the wrongdoing. Air Force officials stated that they view administrative agreements as an effective tool to get the contractor to improve its practices and have successfully used them in lieu of debarment, even for some small businesses.

Among DOD's 30 administrative agreements, 12 were with small businesses. The majority of agreements contained certain requirements contractors must comply with to be removed from EPLS and were for a length of 3 years. For example, an Army administrative agreement required a contractor to submit a report on a quarterly basis on the contractor's implementation of the Integrity and Values Program laid out in the agreement. Also, some required that management of the contractors be changed. Most of the administrative agreements required the contractors to adopt, implement, and maintain a self-governance

program that included a business ethics and compliance program that applied to all employees. A majority of the contractors who entered into administrative agreements were originally suspended or proposed for debarment.

In debarment cases, a contractor's removal from EPLS is automatic when the fixed debarment period ends. The contractor is not required to show that changes have been made to ensure that the reason(s) that the contractor was debarred would not be repeated.

DOD Has Not Complied with Requirement to Submit Compelling Reason Determinations to GSA

Contractors that are suspended, proposed for debarment, or debarred are excluded from receiving new contracts, and agencies may not solicit offers from, award contracts to, or consent to subcontracts with these contractors, unless the agency designee determines on a contract-by-contract basis that there is a compelling reason for such action. The authority to grant compelling reason determinations varies in DOD components. While the FAR provides the agency head with the authority, in most cases it allows for the responsibility to be delegated. For example, in the Air Force, the Assistant Secretary of the Air Force for Acquisition/Contracting makes this determination, but in the Army, the SDO has the authority. DOD components made 14 compelling reason determinations during fiscal years 2009 through 2011. (See table 5.)

Table 5: DOD Compelling Reason Determinations, Fiscal Years 2009 through 2011

Components	Office delegated approval authority	Number of compelling reason determinations
Department of the Air Force	Assistant Secretary of the Air Force for Acquisition/Contracting	0
Department of the Army	Suspension and Debarment Official	7
Defense Logistics Agency	Special Assistant for Contracting Integrity (Suspension and Debarment Official) <sup>a</sup>	7
Department of the Navy	Assistant Secretary for the Navy Research, Development & Acquisition	0

Source: DOD and GAO presentation.

<sup>a</sup>DLA officials stated that the Director of DLA retains the authority to approve compelling reason determinations.

One example of a compelling reason determination involved a debarred subcontractor that provided 75 percent of specific material to the Army, including water purification equipment, air conditioning materials,

---

electrical materials and repair items, and generators in Iraq and Afghanistan. Based upon the immediate operational need for the materials, insufficient time to mobilize another subcontractor to supply the items and the impact on the life, safety, and security of personnel, the SDO granted the request and made a compelling reason determination.

The DOD Authorization Act of 1982 requires that any compelling reason determination by DOD be justified in writing, and notice of the determination be submitted to GSA, to be kept on file for public inspection.<sup>11</sup> However, according to GSA officials, DOD had not submitted any notices of these determinations. DOD officials stated that they were uncertain why these determinations had not been forwarded to GSA. Based on our recent inquiry, DOD officials stated that they are now forwarding these determinations to GSA and provided us with supporting documentation.

---

## Conclusion

In accordance with policies and procedures, DOD components are actively pursuing leads of contractor misconduct from numerous sources, collaborating across the agency and within each component, and generally adhering to the FAR in carrying out their responsibilities. While suspension and debarment decisions vary among the cases, these are made within the discretion provided by the FAR. Our review of sample cases identified sufficient documentation to demonstrate general compliance with its processes. But DOD has not been complying with a requirement to provide written notice to GSA when it decides there is a compelling reason to award a contract to a suspended or debarred entity. The availability of the notification of compelling reason determinations is important for transparency to the public not only on the quantity of these determinations but also to demonstrate that compelling reason determinations are carefully considered and used only when necessary.

---

## Recommendation for Executive Action

We recommend that the Secretary of Defense direct the Under Secretary of Defense for Acquisition, Technology, and Logistics to ensure that each DOD component is aware of and complies with the requirement to notify the GSA of determinations that a compelling reason exists to do business with a suspended or debarred contractor.

---

<sup>11</sup>Pub. L. No. 97-86, § 914 (1981) (codified as amended at 10 U.S.C. § 2393).

---

## Agency Comments

We provided a draft of this report to DOD. DOD provided written comments, which are reproduced in appendix III. DOD also provided technical comments, which we incorporated as appropriate. In its written comments, DOD stated that it concurred with our recommendation and stated it will prepare a memorandum to its acquisition community referencing appropriate agency guidance.

---

We are sending copies of this report to the Secretary of Defense, the Under Secretary of Defense for Acquisition, Technology, and Logistics, the Administrator of General Services, the Director of the Office of Management and Budget, and other interested parties. This report will also be available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staff have any questions about this report, please contact me at (202) 512-4841 or [woodsw@gao.gov](mailto:woodsw@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report are listed in appendix IV.



William T. Woods, Director  
Acquisition and Sourcing Management



---

# Appendix I: Scope and Methodology

---

To determine the extent the Department of Defense (DOD) has processes for identifying and referring cases of possible suspension and debarment and how DOD components make suspension and debarment decisions, we reviewed the Federal Acquisition Regulation (FAR), as well as regulations, procedures, processes, and policies as they pertain to suspension and debarment for the Department of the Navy (DON) (including the U.S. Marine Corps), Departments of the Air Force, and Army, and the Defense Logistics Agency (DLA). These components account for 4,876 of 4,884 (99.8 percent) of DOD suspensions and debarments for fiscal years 2007 through 2011. We also interviewed the Suspension and Debarment Official, acquisition officials, and Defense Criminal Investigative Organization officials in each component.

We also analyzed data for fiscal years 2009 through 2011 from the Excluded Parties List System (EPLS) regarding suspended and debarred contractors.<sup>1</sup> We identified the total universe of suspension, proposed debarment, and debarment actions for fiscal years 2009 through 2011 by the four DOD components by downloading the EPLS data from EPLS public website. EPLS actions may be related to numerous actions.<sup>2</sup> For example, multiple individuals may be associated with an excluded firm and firms and individuals may be listed under different names—all of which are recorded as separate actions in EPLS. In addition, each listed firm or individual can have a suspension, proposed debarment, and debarment, which are also listed as separate actions. For the purpose of this review, we identified firms with an initial action for fiscal years 2009 through 2011. We combined the current and archived exclusions for firms, eliminated duplicates from each file, and counted only the first action. We defined contractors as having a unique Data Universal

---

<sup>1</sup>EPLS is a publicly available electronic database containing the list of all parties suspended, proposed for debarment, debarred, declared ineligible, or excluded or disqualified by agencies. It was recently combined with other data systems and the suspension and debarment information can now be found in the System for Award Management.

<sup>2</sup>EPLS entries are classified as (1) Individual—A person; (2) Firm (contractor)—A company or organization; (3) Entity—A person, organization, or thing capable of bearing legal rights and responsibilities; and (4) Vessel—A mode of transportation capable of transport by water.

Numbering System (DUNS) number or a debar identifier.<sup>3</sup> This resulted in 915 contractors. (See table 6, which shows the number of actions entered in EPLS and corresponding number of contractors during the same period.)

**Table 6: The Four Components Actions Reported in EPLS and Firms (Contractors), Fiscal Years 2009 through 2011**

<b>Component</b>	<b>Total EPLS actions during this period</b>	<b>Total Firms (contractors) with an initial action during this period</b>
Department of the Air Force	800	197
Department of the Army	953	268
Defense Logistics Agency	1,168	341
Department of the Navy	522	109
<b>Total</b>	<b>3,443</b>	<b>915</b>

Source: GAO analysis of EPLS data.

For the purpose of selecting a sample of suspension, proposed debarment, and debarment actions and to ensure that our sample included actions from each component which also included a mix of contractors having different exclusion lengths, we stratified the population of contractors into 16 categories. These categories included the DOD component that issued the exclusion, the length of the contractor's suspension and proposed debarments, and the length of the contractor's total exclusion period.<sup>4</sup> The population is described in table 7 below.

<sup>3</sup>A DUNS number is a proprietary means of identifying business entities. The DUNS number is used as the federal government's contractor identification code. A debar identifier is a unique identification number assigned to a contractor and actions(s) entered into EPLS.

<sup>4</sup>We classified contractors with indefinite suspension/proposed debarment length into the more than 1 year category. We classified contractors with indefinite exclusion periods into the more than 3 years category. We classified contractors who were not suspended or proposed for debarment prior to debarment (69 contractors) in the 1 year or less category.

**Table 7: Description of the Population of Contractors with a Suspension, Proposed Debarment, and Debarment Issued by the Air Force, Army, DLA, and DON, Fiscal Years 2009 through 2011**

Suspension / proposed debarment length	Total length	Department of the Air Force	Department of the Army	Defense Logistics Agency	Department of the Navy	Total
1 year or less	3 years or less	91	112	166	44	<b>413</b>
	More than 3 years	17	47	60	23	<b>147</b>
More than 1 year	3 years or less	13	5	4	25	<b>47</b>
	More than 3 years	76	104	111	17	<b>308</b>
<b>Total</b>		<b>197</b>	<b>268</b>	<b>341</b>	<b>109</b>	<b>915</b>

Source: GAO analysis of EPLS data.

For further analysis we selected a stratified random sample of 75 contractors. In selecting our sample, we chose the sample size in each of the 16 strata using a three step process:

1. We first identified the minimum sample size in each stratum needed for a nongeneralizable sample of contractors.<sup>5</sup> We used the following criteria to determine the minimum sample size for each category:

- A minimum of 10 contractors from each DOD component
- A minimum of 5 contractors within each DOD component with exclusion length of 3 years or less.
- A minimum of 5 contractors within each DOD component with exclusion length of more than 3 years.
- A minimum of 6 contractors within each DOD component with a suspension/ proposed debarment period of more than 1 year.

2. We then calculated the sample size necessary for a control test so that an upper bound of the 95 percent confidence interval would not exceed 5 percent if the controls were effective for all selected contractors (0 percent error rate) and proportionally allocated the sample size to the 16 category.

<sup>5</sup>We originally planned to conduct a detailed review of a nongeneralizable subsample of 40 contractors, but instead conducted the detailed analysis on all 75 selected contractors.

3. To determine the final sample size, we chose the larger of the two sample sizes for each stratum. The resulting sample size was 75 contractors. The sample design is given in table 8 below.

**Table 8: Description of the Stratified Random Sample from the Population of Contractors With a Suspension, Proposed Debarment, or Debarment by the Air Force, Army, DLA, or Navy, Fiscal Years 2009 through 2011**

Component	Suspension / proposed debarment length	Debarment length sample size		Total
		Less than or equal to 3 years	More than 3 years	
Department of the Air Force	Less than or equal to 1 year	6	2	8
	More than 1 year	3	5	8
Department of the Army	Less than or equal to 1 year	8	4	12
	More than 1 year	3	7	10
Defense Logistics Agency	Less than or equal to 1 year	11	4	15
	More than 1 year	3	8	11
Department of the Navy	Less than or equal to 1 year	3	2	5
	More than 1 year	3	3	6
<b>Total</b>		<b>40</b>	<b>35</b>	<b>75</b>

Source: GAO analysis of EPLS data.

We assessed the reliability of EPLS data by performing electronic testing, reviewing system documentation, and relying on a recent assessment of the reliability of EPLS data in a prior GAO engagement. We determined that the data were sufficiently reliable for the purpose of this review.

From the Federal Procurement Data System—Next Generation we identified contractors with three or more terminations for default with one of the four DOD components to determine if these contractors were considered for possible suspension or debarment. We selected a stratified random sample of 68 contractors. The sample design is given in table 9 below. We placed these 68 contractors into three strata and first selected all contractors that were issued a termination for default by the Air Force or had been suspended or debarred with certainty. We expected that the proportion of contractors that were reviewed for suspension and debarment as a result of a termination for default will be 100 percent for the first group and 0 percent for the other two groups. We calculated the sample size in group 3 so that the 95 percent confidence interval would not exceed 10 percent if none of the selected contractors had been reviewed for suspension and debarment as a result of a termination for default. In addition, the sample size in the third group would allow for overall estimates (all three groups combined) with a

margin of error less than plus or minus 10 percentage points, if the expected results are close to the observed results of the sample. Since a selected contractor may have one or more terminations for default from multiple DOD components (Air Force, Army, DON, or DLA), we collected information from each component that issued the contractor a termination for default.

**Table 9: Description of the Random Sample of Contractors With Three or More Terminations for Default Issued by the Air Force, Army, Navy, or DLA, Fiscal Years 2006 through 2011**

Strata description	Population size	Sample size
1. Contractors with at least one termination for default issued by the Department of the Air Force	28	28
2. Contractors suspended or debarred without a Department of Air Force termination	10	10
3. Contractors with terminations for default issued by the Departments of the Army, and the Navy, and the Defense Logistics Agency that did not have a termination of default issued by the Department of the Air Force	88	30
<b>Total</b>	<b>126</b>	<b>68<sup>a</sup></b>

Source: GAO analysis of Federal Procurement Data System—Next Generation data.

<sup>a</sup>Total sample size is 62, due to miscoding, omission, and no information.

We also analyzed the four components administrative agreements, as well as their compelling reason determinations that allow agencies to award a contract to a suspended or debarred contractor for the period of fiscal years 2009 through 2011.

We also reviewed the following regulations and guidance:

- FAR Subpart 9.4—Debarment, Suspension, and Ineligibility.
- Department of Defense Federal Acquisition Regulation Supplement Subpart 209.4—Debarment, Suspension, and Ineligibility.
- Army Federal Acquisition Regulation Supplement Subpart 5109.4—Debarment, Suspension, and Ineligibility.
- Air Force Federal Acquisition Regulation Supplement Subpart 5309.4—Debarment, Suspension, and Ineligibility.
- Defense Logistics Acquisition Directive Subpart 9.4—Debarment, Suspension, and Ineligibility.
- Navy Marine Corps Acquisition Regulation Supplement Subpart 5209.4—Debarment, Suspension, and Ineligibility.

- 
- Air Force Instruction 51-1101 addresses overall responsibility for managing the Air Force Procurement Fraud Remedies Program.
  - Army Regulation 27-40 Chapter 8 addresses remedies in procurement fraud and corruption. The policies, procedures, and responsibilities for reporting and resolving allegations of procurement fraud or irregularities within the Army. It implements DOD Directive 7050.5.
  - Secretary of the Navy Instruction 5430.92B is the DON policy, to set forth responsibilities of DON officials, personnel and the Acquisition Integrity Office including management, direction and coordination of responsibilities of auditing, inspection, and investigative components.
  - DLA's Business Integrity Program Handbook provides guidance and reference material for DLA's Office of General Counsel attorneys in ensuring that DLA deals only with responsible contractors. This handbook also provides Primary Level Field Activities with advice in ensuring overall business integrity within the procurement process, both inside and outside government.
  - DOD Report to Congress on Contracting Fraud, October 2011.
  - Department of Defense Inspector General report issued July 14, 2011, titled "Additional Actions Can Further Improve the DOD Suspension and Debarment Process."

We conducted this performance audit from September 2011 to September 2012 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

# Appendix II: DOD Components' Suspension and Debarment Programs and Staff

DOD component	Description	Staff
Department of the Air Force	The Air Force's suspension and debarment program is co-located with the Department's Procurement Fraud Remedies program in the office of the Deputy General Counsel. All attorneys are cross-trained in suspension, debarment, procurement fraud remedies, and ethics. One full-time lawyer focuses primarily on suspensions and debarments and one focuses primarily on coordinating all procurement fraud remedies (criminal, civil, administrative, and contractual). The office is run by a full-time suspension and debarment official (SDO).	Full-time: 2 attorneys. 3 staff support (interns, 1 dual-hatted as paralegal)
Department of the Army	The Army's suspension and debarment program is located in the Procurement Fraud Branch, which falls within the U.S. Army Legal Services Agency and is part of the Army's fraud prevention/contracting integrity program. There are three SDOs in the Army, one for Army-wide cases based in Arlington, Virginia and 2 for overseas installations (Korea and Germany). Staff responsibilities include processing referrals from DOD and Army offices of Inspector General, the Army's field activity offices, Justice, and law enforcement organizations, as well as assisting in coordination of remedies with Justice and coordinating lead agency determinations with other federal agencies.	Full-time: 5 attorneys, 1 paralegal
Defense Logistics Agency (DLA)	DLA's suspension and debarment program is administered by DLA's Office of General Counsel. This activity is part of the agency's larger business integrity program. Suspension and debarment staff responsibilities include processing referrals from the agency's primary field activity offices, working with law enforcement, Assistant United States Attorneys, and Justice, and coordinating lead agency determinations with other federal agencies.	Full-time: 3 attorneys Part-time: 1 paralegal
Department of the Navy (DON)	The DON's suspension and debarment program is part of the Acquisition Integrity Office within the Office of General Counsel. This office carries out the DON's suspension and debarment activities as part of a larger fraud prevention program. The staff from this office is responsible to develop and process suspension and debarment cases, working with Justice regarding qui tams and criminal actions, ensuring coordination of all potential procurement fraud remedies (criminal, civil, administrative, and contractual), and providing annual training on procurement fraud issues.	Full-time: 14 attorneys, <sup>a</sup> 3 staff support

Source: Department of Defense component data.

<sup>a</sup>Within the DON, all the acquisition fraud attorneys are centralized within the Acquisition Integrity Office, whereas the other components have fraud attorneys located in the field working with investigators.

# Appendix III: Comments from the Department of Defense



ACQUISITION,  
TECHNOLOGY  
AND LOGISTICS

## OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON  
WASHINGTON, DC 20301-3000

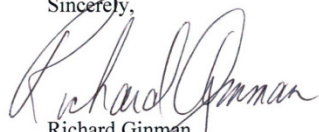
SEP 14 2012

Mr. William T. Woods  
Director, Acquisition and Sourcing Management  
U.S. Government Accountability Office  
441 G Street, N.W.  
Washington, DC 20548

Dear Mr. Woods:

This is the Department of Defense (DoD) response to the GAO Draft Report, GAO-12-932, "SUSPENSION AND DEBARMENT: DoD Has Active Referral Processes, but Additional Action Needed to Promote Transparency," dated August 31, 2012 (GAO Code 121018). Detailed comments on the report recommendations are enclosed.

Sincerely,

  
Richard Ginman  
Director, Defense Procurement  
and Acquisition Policy

Enclosure:  
As stated



**GAO DRAFT REPORT DATED AUGUST 31, 2012  
GAO-12-932(GAO CODE 121018)**

**"SUSPENSION AND DEBARMENT: DOD HAS ACTIVE REFERRAL PROCESSES,  
BUT ADDITIONAL ACTION NEEDED TO  
PROMOTE TRANSPARENCY"**

**DEPARTMENT OF DEFENSE COMMENTS  
TO THE GAO RECOMMENDATIONS**

**RECOMMENDATION:** The GAO recommends that the Secretary of Defense direct the Under Secretary of Defense for Acquisition, Technology, and Logistics to ensure that each DoD component is aware of and complies with the requirement to notify the GSA of determinations that a compelling reason exists to do business with a suspended or debarred contractor. (See page 20/GAO Draft Report.)

**DoD RESPONSE:** The DoD concurs with the recommendation and compelling reason determinations have subsequently been submitted to GSA. DPAP will prepare a memorandum to the acquisition community referencing the requirement at DFARS 209.405 and appropriate agency implementing guidance.

Now on p. 18.

---

# Appendix IV: GAO Contact and Staff Acknowledgments

---

## GAO Contact

William T. Woods, (202) 512-4841 or woodsw@gao.gov

---

## Staff Acknowledgments

In addition to the contact named above, John Neumann, Assistant Director; James Ashley; Patrick Breiding; Richard Brown; Russ Reiter; Roxanna Sun; Robert Swierczek; Keo Vongvanith; and Alyssa Weir made key contributions to this report.

---

## GAO's Mission

The Government Accountability Office, the audit, evaluation, and investigative arm of Congress, exists to support Congress in meeting its constitutional responsibilities and to help improve the performance and accountability of the federal government for the American people. GAO examines the use of public funds; evaluates federal programs and policies; and provides analyses, recommendations, and other assistance to help Congress make informed oversight, policy, and funding decisions. GAO's commitment to good government is reflected in its core values of accountability, integrity, and reliability.

---

## Obtaining Copies of GAO Reports and Testimony

The fastest and easiest way to obtain copies of GAO documents at no cost is through GAO's website (<http://www.gao.gov>). Each weekday afternoon, GAO posts on its website newly released reports, testimony, and correspondence. To have GAO e-mail you a list of newly posted products, go to <http://www.gao.gov> and select "E-mail Updates."

---

## Order by Phone

The price of each GAO publication reflects GAO's actual cost of production and distribution and depends on the number of pages in the publication and whether the publication is printed in color or black and white. Pricing and ordering information is posted on GAO's website, <http://www.gao.gov/ordering.htm>.

Place orders by calling (202) 512-6000, toll free (866) 801-7077, or TDD (202) 512-2537.

Orders may be paid for using American Express, Discover Card, MasterCard, Visa, check, or money order. Call for additional information.

---

## Connect with GAO

Connect with GAO on [Facebook](#), [Flickr](#), [Twitter](#), and [YouTube](#). Subscribe to our [RSS Feeds](#) or [E-mail Updates](#). Listen to our [Podcasts](#). Visit GAO on the web at [www.gao.gov](http://www.gao.gov).

---

## To Report Fraud, Waste, and Abuse in Federal Programs

Contact:

Website: <http://www.gao.gov/fraudnet/fraudnet.htm>

E-mail: [fraudnet@gao.gov](mailto:fraudnet@gao.gov)

Automated answering system: (800) 424-5454 or (202) 512-7470

---

## Congressional Relations

Katherine Siggerud, Managing Director, [siggerudk@gao.gov](mailto:siggerudk@gao.gov), (202) 512-4400, U.S. Government Accountability Office, 441 G Street NW, Room 7125, Washington, DC 20548

---

## Public Affairs

Chuck Young, Managing Director, [youngc1@gao.gov](mailto:youngc1@gao.gov), (202) 512-4800 U.S. Government Accountability Office, 441 G Street NW, Room 7149 Washington, DC 20548

